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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jonathan Gressel

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EXAMINER

FOX, DAVID T

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Applicant's Response

Applicant's amendments of 13 February 2009 and arguments of 17 July 2008 have overcome all rejections not repeated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Obviousness

Claims 19-22 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Deitrich et al (US 5,731,180) in view of WO 97/29123 (JOHN INNES CENTRE), for the reasons presented on pages 18-19 of the Office action of 29 April 2008.

Applicant's arguments filed 17 July 2008 have been fully considered but they are not persuasive. Applicant urges that neither reference teaches the claimed method of using the two linked transgenes for the mitigation of introgression of beneficial traits into weedy species.

The Examiner maintains that Dietrich et al teach plant transformation with a mutant *ahas* gene conferring herbicide resistance, and claim the linkage of this gene with another gene of agronomic interest (see, e.g., claims 1 and 8); while JOHN INNES CENTRE teaches that dwarfism is an agronomic trait. Thus, the combination of the prior art teaches the same method of transforming a plant with the same transgenes as claimed, even if the purpose of said transformation is different. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for

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patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

Claims 1, 4-5, 7 and 24 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest plant transformation with a construct comprising the particularly claimed mitigating genes and agronomic genes between 0-10 centimorgans apart; wherein said very tight linkage is particularly advantageous to prevent the survival or reproduction of weedy plants accidentally transformed with the agronomic gene.

Claims 17-18 and 23 are deemed free of the prior art, given the failure of the prior art to teach or reasonably suggest plant transformation with an anti-shattering gene linked to an herbicide resistance gene, as stated on page 20 of the Office action of 29 April 2009.

Claims 1, 4-5, 7, 17-18, 23 and 24 are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (571) 272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David T Fox/

Primary Examiner, Art Unit 1638

June 3, 2009